HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION No.5817 of 2007

Date: 26-03-2007.

Between :

M/s.Saipem (Portugal) Commercio Martitimo SU Lda.,
Mumbai, rep. by its Manager (Finance & Administration).

.....Petitioner

And

The Commercial Tax Officer, Kakinada Circle,
Kakinada & another.

.....Respondents.

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AND
HON'BLE SRI JUSTICE G.BHAVANI PRASAD

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ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

When this case came up before this Court on the last date, the learned Government Pleader sought time to get instructions. With his consent the writ petition is disposed of at this stage.

The grievance of the petitioner is that a show cause notice was given to him on 17.11.2006 in which he was informed, *"The above Gross Turnover of Rs.50,27,32,773/- is proposed to tax @ 8% under section 5F of the APGST Act without allowing any exemptions."* He replied to the notice and a final order was passed on 28.02.2007. One of the paragraphs of the impugned order reads as under—

> *"The total receipts received from the GSPC during the year 2004-05 to an extent of Rs.50,27,32,773/- are treated as Gross turnover relates to the supply of Rig equipment and materials and Rig drilling operations, taxable @ 8% under Section 5(E) and 5(F) of the APGST Act 1957. The details of the Invoices for the*

supply of Rig material and equipment and Hire charges received for drilling operations are provided by the dealer vide their letter dated 14.02.2007, as a result of which, levied tax @ 8% on the Gross receipts under section 5(E) and 5(F) of the APGST Act 1957 though the turnover was proposed to tax under section 5(F) in the Show Cause Notice in the absence of such details."

Although a notice has been given under Section 5(F) of the A.P.General Sales Tax Act, 1957 (hereinafter referred to as 'the Act'), the assessment was also made under Section 5(E) of the Act. Therefore, the petitioner's case is that there was no notice at any point of time to him to show cause against an assessment under Section 5(E) of the Act. Therefore, we feel that the matter should be again remanded to Respondent No.1-Commercial Tax Officer on the sole ground that before passing an order under Section 5(E) of the Act, no chance of hearing or showing a cause, was given to the petitioner. The learned counsel appearing for the petitioner submits that after quashing the impugned order, it may be directed that the impugned order be treated as a notice under Sections 5(E) and 5(F) of the Act jointly and he be given a chance to show cause. We feel that this is a fair procedure suggested by the counsel for petitioner.

Therefore, we quash the impugned order and direct that the impugned order be treated as a show cause notice for showing cause as to why an assessment

should not be made under Sections 5(E) and 5(F) of the Act. The petitioner shall file his objections within four weeks from today and thereafter, respondent No.1-Commercial Tax Officer may decide the issue in accordance with law.

Writ petition is accordingly allowed.

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BILAL NAZKI, J

26th March 2007.

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G.BHAVANI PRASAD, J

ajr